

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 VS.) No. 1:23-CR-00020-H-BU-1
)
 TERRELL CHARLES FRYAR,)
)
 Defendant.)
 _____)

ELECTRONICALLY-RECORDED REARRAIGNMENT HEARING
BEFORE THE HONORABLE JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE
SEPTEMBER 28, 2023
ABILENE, TEXAS

FOR THE PLAINTIFF:

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Proceedings recorded electronically; transcript produced by
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1 (Proceedings commenced at 10:45 AM.)

2 THE COURT: The Court now calls Case No. 1:23-CR-020-1,
3 *United States of America versus Terrell Charles Fryar*.

4 MR. TUSING: Matt Tusing for the United States. Ready
5 to proceed, Your Honor.

6 THE COURT: Thank you.

7 MR. HOAK: Mark Hoak for the Defendant, Your Honor.

8 THE COURT: Thank you, counsel.

9 And, Mr. Fryar, as you know, we're here for your
10 rearraignment or guilty plea. So there's a little procedural
11 wrinkle. I hate to call it that because it's an important issue,
12 but just to -- you know, you'll understand this as we go through
13 it, and your attorney's probably already explained it to you.

14 You were originally charged by Indictment by a
15 Grand Jury and now the Government has superseded that Indictment
16 with an Information. An Information is a notice of a federal
17 charge filed by the United States Attorney. And you have signed
18 a waiver of your right to be indicted, so I know you've talked
19 about this with your lawyer, but I need to make a record of this
20 as we go forward.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So why don't we do this: You're going to
23 need to be under oath during this hearing, so please stand now
24 and let me do that and then we'll continue.

25 To the extent you can, raise your right hand.

1 Do you solemnly swear or affirm under penalty of
2 perjury that the testimony you'll give today before this Court is
3 the truth, the whole truth, and nothing but the truth?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Thank you, sir. Please be seated.

6 EXAMINATION BY THE COURT:

7 Q. So when I first saw you on the Indictment, I explained to
8 you your -- obviously, you have counsel, your right to counsel,
9 your right to silence, and all your rights associated with being
10 charged with a federal crime.

11 Do you understand that?

12 A. Yes, sir.

13 Q. And you understand you continue to have those rights in
14 connection with this charge in the Superseding Information even
15 though it's not handed down by a Grand Jury.

16 Do you understand that?

17 A. Yes, sir.

18 Q. All right. So you have that inclusive right to not make any
19 statement about any charges against you, including the one in the
20 Superseding Information.

21 Do you understand that?

22 A. Yes, sir.

23 Q. All right. So you presumably have received a copy of the
24 Superseding Information. Is that correct?

25 A. Yes, sir.

1 Q. All right.

2 THE COURT: And, Mr. Tusing, would you please read the
3 charge?

4 MR. TUSING: Your Honor, would you like me to read the
5 full Information?

6 THE COURT: It's a single count, right?

7 MR. TUSING: Yes, Your Honor.

8 THE COURT: Just -- Do you want him to read the entire
9 charge or just a summary?

10 MR. HOAK: We'll waive the reading.

11 THE COURT: Just a summary. Thank you.

12 MR. TUSING: Yes, Your Honor.

13 There's a single count in the Superseding Information.
14 It alleges Possession with Intent to Distribute Methamphetamine,
15 meaning that you knowingly possessed a controlled substance which
16 was, in fact, methamphetamine, and that when you possessed it,
17 you possessed it with an intent to distribute it. It's a simple
18 possession-with-intent-to-distribute count.

19 THE DEFENDANT: Yes, sir.

20 Q (By The Court) And, again, this is your first appearance in
21 federal court on that charge.

22 A. Yes, sir.

23 Q. That's why we're going through this. So do you understand
24 the new charge?

25 A. Absolutely, yes, sir.

1 Q. All right.

2 THE COURT: And the maximum penalties the Court can
3 impose for someone convicted of that charge?

4 MR. TUSING: Includes:

5 A term of imprisonment of no more than 20 years;

6 A fine not to exceed one million dollars or both;

7 A term of supervised release of not less than three
8 years and up to life;

9 Costs of incarceration and supervision;

10 Forfeiture of property;

11 Restitution to victims or the community; and

12 A Mandatory Special Assessment of \$100.

13 THE COURT: Thank you.

14 Q (By The Court) And, Mr. Fryar, you understand the maximum
15 penalties for these charges in the Superseding Information?

16 A. Yes. Yes, sir.

17 Q. Well, you're looking quizzically at me, so I'm going to give
18 you a chance to visit with Mr. Hoak because I want to make sure
19 you understand the maximum penalties.

20 If you need some privacy, we'll ---

21 (White noise turned on in the courtroom while Defense
22 counsel met with his client.)

23 Q (By The Court) All right. I just want to make sure before
24 we go any further.

25 A. Yes.

1 Q. We're not in any rush. We're going to make sure we get it
2 right.

3 A. Thank you, Your Honor.

4 Q. All right. So you understand the new charge and the
5 penalties for that new charge. So let me now explain to you the
6 charge in the Superseding Information is also similar to the
7 charge in the Indictment, a very serious charge. Our
8 Constitution and specifically the Fifth Amendment to our
9 Constitution guarantees that a person charged with a serious
10 federal crime in this country has the right to have that charge
11 presented first to a Grand Jury.

12 Do you understand that?

13 A. Yes, sir.

14 Q. However, a person, like yourself, may waive his right to
15 have the case presented to a Grand Jury and agree -- excuse me --
16 to being charged by this document called a "Superseding
17 Information." If you do not waive that right to be indicted and
18 the Government wishes to pursue the charge against you, then they
19 must present the case to a Grand Jury and secure an Indictment.

20 Do you understand that?

21 A. Yes, sir.

22 Q. A Grand Jury is supposed of at least 16 people but no more
23 than 23, and at least 12 of those people have to find probable
24 cause or a fair probability to believe you've committed the crime
25 or they won't return an indictment.

1 Do you understand that?

2 A. Yes, sir.

3 Q. Do you also understand that the Government may or may not
4 get 12 people to agree that you committed the crime charged in
5 that Superseding Information?

6 A. Yes, sir.

7 Q. All right. And you also understand that if you agree to
8 waive your right to being indicted, this case will proceed today,
9 including through your plea, just as if you were indicted?

10 A. Yes, sir.

11 Q. All right.

12 THE COURT: I do find that Mr. Fryar has knowingly and
13 voluntarily waived his right to be indicted by a Grand Jury. The
14 Court will accept the waiver which now brings us to your plea.

15 Q (By The Court) I want to remind you that you have the right
16 to visit with Mr. Hoak at any time during this hearing if you
17 have any question about anything we're doing.

18 I also want to remind you that you have the right to
19 enter your guilty plea before a United States District Judge, but
20 you may agree to me accepting your plea and making a
21 recommendation to the District Judge.

22 I do see that you previously signed a Consent Form. I
23 just want to confirm that you still consent to me accepting your
24 plea.

25 Is that correct?

1 A. Yes, sir.

2 Q. All right.

3 THE COURT: I find that Mr. Fryar has knowingly and
4 voluntarily consented to the Magistrate Judge conducting these
5 proceedings.

6 Q (By The Court) Let's start by having you give us your full
7 name for the record.

8 A. Terrell Charles Fryar.

9 Q. And, Mr. Fryar, I didn't say this earlier, I don't think,
10 but you understand that now you're under oath, any false
11 information could possibly result in you being charged with
12 perjury or making a false statement?

13 A. Yes, sir.

14 Q. All right. Where were you born?

15 A. I was born in Big Spring, Texas.

16 Q. And how old are you now?

17 A. I'm 54.

18 Q. Okay. And in the past 12 months have you been treated for
19 substance abuse of any kind?

20 A. No, sir.

21 Q. All right. In the past 12 months have you been under the
22 care of a healthcare practitioner for any reason, including
23 mental health?

24 A. My -- I have a regular doctor that I see, yes, sir.

25 Q. And what kind of medicines are you taking?

1 A. I take Trazodone for sleep.

2 Q. All right. And are you currently taking that?

3 A. Yes, sir.

4 Q. Let me ask you: Does that affect your ability to think
5 clearly?

6 A. Not at all.

7 Q. So today as you sit here, do you feel that you think --
8 you're thinking clearly and you understand why you're here?

9 A. Yes, sir, absolutely.

10 Q. All right. Thank you.

11 THE COURT: Mr. Hoak, in working wit Mr. Fryar, have
12 you uncovered any reason to doubt his competence to plead?

13 MR. HOAK: No, sir.

14 THE COURT: Mr. Tusing, does the Government have any
15 reason to doubt Mr. Fryar's competence?

16 MR. TUSING: No, Your Honor.

17 THE COURT: Thank you, both.

18 I do find that Mr. Fryar's competent to understand
19 these proceedings and to enter a knowing and voluntary plea.

20 Q (By The Court) Mr. Fryar, I'm going to go over some of the
21 rights you're going to be giving up as part of your plea and some
22 of the consequences of being convicted of this charge, so listen
23 carefully. Again, if you have any questions, let me know.

24 First and foremost, no one can force you to plead
25 "guilty."

1 You have the right to demand a trial by a jury on the
2 charges against you. And if you exercise that right, you would
3 be presumed innocent at that trial, and the burden would be on
4 the Government to establish your guilt beyond a reasonable doubt
5 to each juror who's selected to hear your case.

6 And you'd have the right to help pick that jury with
7 Mr. Hoak and be present and confront the witnesses called to
8 testify against you, have those witnesses cross-examined by
9 Mr. Hoak, and have him object to evidence offered against you and
10 otherwise challenge the Government's case.

11 You would also have the right and power of this Court
12 to compel certain evidence and testimony in your favor.

13 You would have the right to testify at that trial, if
14 you chose to do so, but, more importantly, you would have the
15 right to not testify, and the Government could not use your
16 exercise of that right to suggest to the jury that you're somehow
17 guilty.

18 And even if you were convicted after this trial, you
19 would still have the right to appeal that conviction and any
20 sentence imposed by the District Judge.

21 Now on the other hand, if you go forward today with
22 your decision to plead "guilty" and the District Judge accepts
23 your plea, he will adjudge you guilty based solely on the
24 strength of your plea, not based on any evidence considered by a
25 jury or any trial.

1 Do you understand that?

2 A. Yes, sir.

3 Q. You also understand that while I just reminded you of your
4 right to silence, clearly if you plead "guilty," you'll have to
5 waive that with regard to the charge you're admitting.

6 Do you understand that?

7 A. Yes, sir.

8 Q. And lastly, this being a felony offense, a conviction likely
9 means there's going to be restrictions on your -- some of your
10 civil rights at least for a time, including your right to vote,
11 to hold public office, to serve on a jury and to possess a
12 firearm.

13 Do you understand that?

14 A. Yes, sir.

15 Q. All right. Now having discussed those issues with you, do
16 you still believe it's in your best interest to plead "guilty"?

17 A. Yes, sir, I do.

18 Q. Thank you, Mr. Fryar.

19 I'm going to go over a couple of documents with you.

20 There's a Plea Agreement, a Plea Agreement Supplement and a
21 Factual Resume. Each of these appears to bear your signature.

22 Do you recall signing those?

23 A. Yes, sir, I do.

24 Q. And prior to signing them, did you read each of them
25 carefully and discuss them thoroughly with your attorney?

1 A. Yes, sir, I did.

2 Q. And did you understand everything in those documents before
3 signing them?

4 A. Yes, sir, I believe so.

5 Q. Thank you.

6 I'm going to go over a couple of paragraphs, and then I'm
7 going to stop and give you a chance to ask any questions you may
8 have.

9 Paragraph 1 goes over the rights we've already discussed.

10 Paragraph 2 recites that you're pleading to Count One of the
11 Superseding Information, Possession with Intent to Distribute
12 Methamphetamine.

13 And Paragraph 3 goes over the maximum penalties which
14 Mr. Tusing has already read to us at the beginning of this
15 hearing.

16 Do you wish to go over those again?

17 A. No, sir.

18 Q. You understand them?

19 A. Yes, sir.

20 Q. And you have them in front of you, correct?

21 A. Yes, sir, I do.

22 Q. All right. And you understand if you plead "guilty" today
23 and the District Judge accepts your plea, you'll be subject to
24 these penalties up to the maximum?

25 A. Yes, sir.

1 Q. All right. You understand in the federal system there's no
2 parole. So if you're sentenced to prison, you will not be
3 released on parole.

4 A. Yes, sir.

5 Q. Okay. Paragraph 5 discusses the *United States Sentencing*
6 *Guidelines*, and let me just go over that with you a little bit.

7 MR. TUSING: Your Honor, I'm sorry to interrupt. I
8 think Paragraph 5 covers the (c) (1) (C) we have in this case.

9 THE COURT: You're correct. Yes.

10 Q (By The Court) I will still go over the *Sentencing*
11 *Guidelines* because they're still relevant even with a (c) (1) (C)
12 because the District Judge may not accept the (c) (1) (C) and then
13 you may want to go forward without the (c) (1) (C) in which case
14 the *Guidelines* will become very relevant.

15 And they're also relevant because you only have a
16 (c) (1) (C) with regard to your term of imprisonment and there are
17 other aspects to sentencing that you don't have a (c) (1) (C) on,
18 like the fine or the penalty or the terms of your supervised
19 release, for instance.

20 A. Yes.

21 Q. So I'm going to go over the -- the *Guidelines* just so you'll
22 understand the backdrop to all of this. All right?

23 A. Thank you.

24 Q. So the *Guidelines* are non-binding guidelines issued to
25 District Judges to guide them in arriving at the appropriate

1 sentence in federal criminal cases. They are -- The judge will
2 consider those in sentencing a criminal defendant along with any
3 authorized departures or variances, upward or downward, from
4 those guidelines, and there's some additional statutory
5 sentencing factors that they also take into consideration.

6 But a District Judge will not be able to determine a
7 defendant's guideline sentence until after a PSR or Presentence
8 Report has been prepared by the probation officer assigned to
9 your case.

10 And to prepare that report, the probation officer will
11 interview you and the Government about the facts of your case.
12 And I know you've agreed to this set of facts in the Factual
13 Resume, which we'll get to next, but you need to understand that
14 the District Judge is not bound by that set of facts and in
15 sentencing you, he may find facts that aren't in that -- rely on
16 facts that aren't in that Factual Resume and disregard facts that
17 are.

18 Do you understand that?

19 A. Yes, sir.

20 Q. You'll have an opportunity, of course, to object to the
21 recommendations and findings in the PSR.

22 Now if -- As Mr. Tusing alluded, if the District Judge
23 accepts your 11(c)(1)(C) agreement for 188 months, that will be
24 your sentence, correct? Do you understand that?

25 A. Yes, sir.

1 Q. All right. As I mentioned, ---

2 THE COURT: Mr. Tusing, it appears there are no other
3 agreements as to sentencing.

4 MR. TUSING: Yes, Your Honor. That's right.

5 THE COURT: All right.

6 Q (By The Court) So you understand that there's no agreement
7 as to the term of supervised release he can impose after that
8 term of imprisonment.

9 A. Yes, sir.

10 Q. You also understand that if the District Judge rejects that
11 11(c)(1)(C) agreement, you will have an opportunity to reconsider
12 your plea and withdraw it.

13 You will also have the opportunity to go forward with your
14 plea, knowing that the District Judge is not bound by that
15 agreement.

16 Do you understand that?

17 A. Yes, sir.

18 Q. And in that case, that's where the *Guidelines* become very
19 important because, again, the District Judge will determine your
20 guideline sentence based upon consideration of the guideline
21 factors, of course, and the other statutory sentencing factors.

22 Do you understand that?

23 A. Yes, sir.

24 Q. Now if that happens, he rejects the Plea Agreement and you
25 want to go forward anyway, you understand that so long as your

1 sentence is within the maximum amount of punishment allowed by
2 the statute we've gone over, even if it's higher than you thought
3 it would be or higher than your attorney may have estimated for
4 you, you won't be allowed to withdraw your plea at that time?

5 A. Yes, sir.

6 Q. All right. One last thing on the (c) (1) (C) agreement. When
7 a defendant enters one of those, I always recommend to the
8 District Judge that the District Judge reserve judgment on
9 whether to accept your plea until after the PSR has been prepared
10 and the parties have had an opportunity to object to the
11 recommendations and findings in the PSR and have a sentencing
12 hearing. So in other words, the judge, if he follows that
13 recommendation, will wait to accept -- to make a decision on the
14 11(c) (1) (C) agreement until sentencing.

15 Do you understand that?

16 A. Yes, sir.

17 Q. All right. The U.S. Attorney's Office in Paragraph 9 is
18 agreeing to not bring any additional charges against you based on
19 the conduct you're admitting.

20 They're also agreeing to dismiss, after sentencing, any
21 remaining charges.

22 If for any reason the District Judge rejects that part of
23 the agreement, Mr. Fryar, you would have an opportunity to
24 reconsider your plea and withdraw it.

25 In Paragraph 12 you're waiving your right to appeal with

1 some exceptions as noted there in Paragraph 12. Those exceptions
2 are, you know, if the judge exceeds the statutory range of
3 punishment or there's some other mathematical error in
4 calculating your sentence or you claim your plea today or your
5 waiver of your appellate rights was not voluntary or your counsel
6 was ineffective in assisting you. But other than that, you're
7 giving up your right to appeal today.

8 Do you understand that?

9 A. Yes, sir.

10 Q. And you've carefully discussed that waiver with your
11 attorney?

12 A. Yes, sir.

13 Q. And you are giving that up of your own free will?

14 A. Yes, sir.

15 Q. All right. Paragraph 13 tells me you have gone through this
16 Plea Agreement with Mr. Hoak and he's explained each paragraph to
17 you and how it affects your rights.

18 Is that correct?

19 A. Yes.

20 Q. And have you been fully satisfied with his representation of
21 you in this case?

22 A. Yes, sir.

23 Q. Let me stop there, Mr. Fryar, and ask you if you have any
24 question about your Plea Agreement, whether I've gone over it or
25 not?

1 A. No, sir.

2 THE COURT: And, Mr. Hoak, are there any provisions you
3 wish me to discuss that I haven't?

4 MR. HOAK: No, sir.

5 THE COURT: Mr. Tusing?

6 MR. TUSING: No, Your Honor.

7 THE COURT: All right.

8 Q (By The Court) I do find, Mr. Fryar, that your Plea
9 Agreement and Plea Agreement Supplement are both in proper form
10 which brings us to the details of the charge. And for that, we
11 will return to the Factual Resume.

12 As Mr. Hoak has probably explained to you, each federal
13 crime has a certain set of facts that must be proven beyond a
14 reasonable doubt to support a conviction, including through a
15 plea such as this, and those are called the "essential elements"
16 of the offense, and those appear on Page 1 of your Factual
17 Resume.

18 Mr. Tusing is going to go over these with us now and
19 then I'll have some questions when he's finished.

20 MR. TUSING: The three essential elements to the
21 offense include that:

22 First, you knowingly possessed a controlled substance;

23 Second, that substance was, in fact, methamphetamine;

24 and

25 Third, that when you possessed the substance, you

1 possessed it with an intent to distribute it.

2 THE COURT: Thank you, Mr. Tusing.

3 Q (By The Court) And, Mr. Fryar, you've carefully discussed
4 those three essential elements with Mr. Hoak.

5 Is that correct?

6 A. Yes, sir.

7 Q. And do you today feel that you understand each of those
8 essential elements of the crime you intend to admit?

9 A. Yes, sir.

10 Q. All right. Now I want you to keep in mind the 11(c)(1)(C)
11 agreement you have and the fact that you do not have an agreement
12 as to any other aspect of sentencing.

13 And with that in mind, I'm going to ask you whether you
14 admit today that you committed each of these three essential
15 elements?

16 A. Yes, sir.

17 Q. All right. There's some additional facts in the Factual
18 Resume we haven't gone over, but do you agree they're true as
19 well?

20 A. Yes, sir.

21 Q. All right. Thank you, Mr. Fryar.

22 And now let me just ask you one final series of questions.

23 But before I do, do you wish to -- do you have any question about
24 anything we've done or wish to visit with your lawyer before
25 entering your plea?

1 A. No, sir. Thank you.

2 Q. All right. Your plea must be purely voluntary, so I need to
3 ask you whether anyone has made any promises to you in exchange
4 for your plea other than the promises made by the U.S. Attorney's
5 Office through this Plea Agreement?

6 A. No, sir.

7 Q. Has anyone threatened you or otherwise tried to force you to
8 plead "guilty"?

9 A. No, sir.

10 Q. And, Mr. Fryar, are you pleading "guilty" today because you
11 are, in fact, guilty and for no other reason?

12 A. Yes, sir.

13 Q. And, sir, are you doing that of your own free will?

14 A. Yes, sir.

15 Q. Mr. Fryar, how now do you plead to Count One of the
16 Superseding Information? Guilty or not guilty?

17 A. Guilty.

18 THE COURT: All right. Being satisfied with the
19 responses given during this hearing, the Court makes the
20 following findings:

21 Mr. Terrell Charles Fryar is fully competent and
22 capable of entering an informed plea. His plea of "guilty" to
23 Count One of the Superseding Information is a knowing and
24 voluntary plea supported by an independent basis in fact that
25 satisfies each of the essential elements of the offense charged

1 and to which he is pleading "guilty."

2 And since he has acknowledged his guilt as charged in
3 Count One of the Superseding Information in open court, I've
4 signed a report directed to the District Judge recommending that
5 he accept your plea.

6 You and Mr. Hoak will have 14 days from today to file
7 any objections to my report or they may be waived.

8 What will happen next is the District Judge is going to
9 order this PSR. So the probation officer will make contact with
10 you, and it's in your best interest to cooperate in providing
11 information for that report because it's a very important piece
12 of information the judge relies on.

13 All right?

14 Mr. Tusing, anything further in Mr. Fryar's case?

15 MR. TUSING: Nothing further, Your Honor.

16 THE COURT: Mr. Hoak?

17 MR. HOAK: No, sir.

18 THE COURT: All right. Mr. Fryar, you'll remain in
19 custody pending sentencing, and we are adjourned. Thank you,
20 sir.

21 THE DEFENDANT: Thank you.

22 MR. HOAK: Permission to be excused, Your Honor?

23 THE COURT: Thank you, Mr. Hoak.

24 (Hearing adjourned at 11:05 AM.)
25

CERTIFICATE OF OFFICIAL REPORTER

I, Deborah A. Kriegshauser, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of Texas, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the electronically-recorded proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 26th day of June, 2024.

/s/ Deborah A. Kriegshauser

DEBORAH A. KRIEGSHAUSER, FAPR, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER